

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FLOORING ASSOCIATES, INC.,

Plaintiff,

v.

DESIGN MANUFACTURING  
INTERNATIONAL, LLC., *et al.*,

Defendants.

CASE NO. 2:20-cv-00057-JCC-JRC

STIPULATED PROTECTIVE  
ORDER

COME NOW Plaintiff Flooring Associates, Inc. and Defendants Design Manufacturing International, LLC and Cavan Carpets (collectively, the “Parties”), by and through their counsel of record, and present the following Stipulated Protective Order:

1. PURPOSES AND LIMITATIONS.

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public  
 2 disclosure and use extends only to the limited information or items that are entitled to confidential  
 3 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
 4 confidential information under seal. Further, nothing in this protective order is to be construed as  
 5 a waiver of a parties' right to assert any objection to a discovery request and withhold any  
 6 document on the basis of a valid objection.

7 2. "CONFIDENTIAL" MATERIAL.

8 2.1 "Confidential" material shall include documents and tangible things: from among  
 9 the following categories, or other information that a party genuinely maintains as private or  
 10 confidential independent of this litigation:

- 11 a. Documents which constitute or describe Design Manufacturing  
 12 International, LLC's and Cavan Carpets' product designs,  
 formulas and/or specifications;
- 13 b. Documents which constitute or describe Design Manufacturing  
 14 International, LLC's and Cavan Carpets' manufacturing  
 processes or procedures;
- 15 c. Documents which constitute or describe the parties' sales and  
 16 financial data related to its products and operations;
- 17 d. Documents which constitute or describe the parties' personnel  
 records;
- 18 e. Documents which constitute or describe the parties'  
 merchandising and/or marketing plans or strategies;
- 19 f. Documents which contain information about the parties'  
 20 customers, including individual employees as well as entities;
- 21 g. Documents which constitute or describe the parties'  
 agreements, sales data, and customer lists;
- 22 h. Documents which constitute or describe Design Manufacturing  
 International, LLC's and Cavan Carpets' product distribution  
 23 network;
- 24 i. Documents which constitute or describe Design Manufacturing  
 International, LLC's and Cavan Carpets' product distribution

1 network;

2 j. Documents which contain personal identifying information of a  
3 person who has made a warranty claim related to a Design  
4 Manufacturing International, LLC's and Cavan Carpets'  
5 product;

6 k. Documents which constitute or describe Design Manufacturing  
7 International, LLC's and Cavan Carpets' claims handling  
8 methods, processes, and/or policies;

9 l. Documents or things which belong to a third-party to this  
10 action that (i) a producing party has designated as confidential  
11 pursuant to this protective order and is producing the  
12 documents pursuant to a subpoena (ii) the producing party has  
13 in its possession, custody, or control solely because of  
14 discovery or other disclosures made by a party to this  
15 proceedings and made pursuant to this protective order;

16 m. Document which constitute or describe Design Manufacturing  
17 International, LLC's and Cavan Carpets' patents, patent  
18 applications, or trade secrets;

19 n. Documents which contain personal identifying information of  
20 an individual.

21 2.2 By making or agreeing to a designation of Confidential material, the parties do not  
22 concede the relevance or availability of such material nor waive any valid objection to the  
23 production of such categories of material. Likewise, the parties do not concede that such material  
24 is entitled to be filed under seal.

### 25 3. SCOPE

26 The protections conferred by this agreement cover not only Confidential material (as  
27 defined above), but also (1) any information copied or extracted from Confidential material; (2)  
28 all copies, excerpts, summaries, or compilations of Confidential material; and (3) any testimony,  
29 conversations, or presentations by parties or their counsel that might reveal Confidential material.  
30 However, the protections conferred by this agreement do not cover information that is in the public  
31 domain or becomes part of the public domain through trial or otherwise.

1           4.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2                 4.1     Basic Principles.

3           A receiving party may use Confidential material that is disclosed or produced by another  
 4 party or by a non-party in connection with this case only for prosecuting, defending, or attempting  
 5 to settle this litigation. Confidential material may be disclosed only to the categories of persons  
 6 and under the conditions described in this agreement. Confidential material must be stored and  
 7 maintained by a receiving party at a location and in a secure manner that ensures that access is  
 8 limited to the persons authorized under this agreement.

9                 4.2     Disclosure of "CONFIDENTIAL" Information or Items.

10           Unless otherwise ordered by the court or permitted in writing by the designating party, a  
 11 receiving party may disclose any information or item designated "CONFIDENTIAL" only to:

- 12                   (a) the receiving party's counsel of record in this action, as well as  
 13                         employees of counsel to whom it is reasonably necessary to  
                              disclose the information for this litigation;
- 14                   (b) if the receiving party is not a natural person, then the officers,  
 15                         directors, and employees (including in house counsel) of the  
 16                         receiving party to whom disclosure is reasonably necessary for  
                              this litigation, unless the parties agree that a particular  
 17                         document or material produced is for Attorney's Eyes Only  
                              and is so designated;
- 18                   (c) the receiving party, if the receiving party is a natural person;
- 19                   (d) experts and consultants to whom disclosure is reasonably  
                              necessary for this litigation and who have signed the  
                              "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 20                   (d) the court, court personnel, and court reporters and their staff;
- 21                   (e) copy or imaging services retained by counsel to assist in the  
 22                         duplication of Confidential material, provided that counsel for  
 23                         the party retaining the copy or imaging service instructs the  
                              service not to disclose any Confidential material to third parties  
 24                         and to immediately return all originals and copies of any  
                              Confidential material;

- 1 (f) during their depositions, witnesses in the action to whom  
 2 disclosure is reasonably necessary and who have signed the  
 3 “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
 4 unless otherwise agreed by the designating party or ordered by  
 5 the court. Pages of transcribed deposition testimony or exhibits  
 6 to depositions that reveal Confidential material must be  
 7 separately bound by the court reporter and may not be  
 8 disclosed to anyone except as permitted under this agreement;
- 9 (g) the author or recipient of a document containing the  
 10 information or a custodian or other person who otherwise  
 11 possessed or knew the information.

#### 12 4.3 Filing Confidential Material.

13 Before filing Confidential material or discussing or referencing such material in court  
 14 filings, the filing party shall confer with the designating party to determine whether the designating  
 15 party will remove the confidential designation, whether the document can be redacted, or whether  
 16 a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth  
 17 the procedures that must be followed and the standards that will be applied when a party seeks  
 18 permission from the court to file material under seal.

### 19 5. DESIGNATING PROTECTED MATERIAL

#### 20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each party or non-party that designates information or items for protection under this  
 22 agreement must take care to limit any such designation to specific material that qualifies under the  
 23 appropriate standards. The designating party must designate for protection only those parts of  
 24 material, documents, items, or oral or written communications that qualify, so that other portions  
 of the material, documents, items, or communications for which protection is not warranted are  
 not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

## 5.2 Manner and Timing of Designations.

Except as otherwise provided in this agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains Confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial or trial proceedings: the parties and any participating non-parties must identify on the record, during the deposition, hearing, or other proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen (15) days after receiving a deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

## 5.3 Inadvertent Failures to Designate.

1 If timely corrected, an inadvertent failure to designate qualified information or items does  
2 not, standing alone, waive the designating party's right to secure protection under this agreement  
3 for such material. Upon timely correction of a designation, the receiving party must make  
4 reasonable efforts to ensure that the material is treated in accordance with the provisions of this  
5 agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges.

8 Any party or non-party may challenge a designation of confidentiality at any time. Unless  
9 a prompt challenge to a designating party's confidentiality designation is necessary to avoid  
10 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or  
11 delay of the litigation, a party does not waive its right to challenge a confidentiality designation by  
12 electing not to mount a challenge promptly after the original designation is disclosed.

13 6.2 Meet and Confer.

14 The parties must make every attempt to resolve any dispute regarding confidential  
15 designations without court involvement. Any motion regarding confidential designations or for a  
16 protective order must include a certification, in the motion or in a declaration or affidavit, that the  
17 movant has engaged in a good faith meet and confer conference with other affected parties in an  
18 effort to resolve the dispute without court action. The certification must list the date, manner, and  
19 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a  
20 telephone conference.

21 6.3 Judicial Intervention.

22 If the parties cannot resolve a challenge without court intervention, the designating party  
23 may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance  
24

with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. The parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- (a) promptly notify the designating party in writing and include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately:

- (a) notify in writing the designating party of the unauthorized disclosures,
- (b) use its best efforts to retrieve all unauthorized copies of the protected material,



1 (c) inform the person or persons to whom unauthorized disclosures  
2 were made of all the terms of this agreement, and

3 (d) request that such person or persons execute the  
4 “Acknowledgment and Agreement to Be Bound” that is  
5 attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
7 PROTECTED MATERIAL.

8 When a producing party gives notice to receiving parties that certain inadvertently  
9 produced material is subject to a claim of privilege or other protection, the obligations of the  
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
11 is not intended to modify whatever procedure may be established in an e-discovery order or  
12 agreement that provides for production without prior privilege review. Parties shall confer on an  
13 appropriate non-waiver order under Fed. R. Evid. 502.

14 10. TERMINATION AND RETURN OF DOCUMENTS.

15 Within 60 days after the termination of this action, including all appeals, each receiving  
16 party must return all Confidential material to the producing party, including all copies, extracts  
17 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
18 destruction along with a certification that such Confidential material was destroyed.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
22 product, even if such materials contain Confidential material.

23 The confidentiality obligations imposed by this agreement shall remain in effect until a  
24 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED this \_\_\_\_\_ day of October, 2020.

3  
4 LAW OFFICE OF JOHN RAZOR

SELMAN BREITMAN LLP

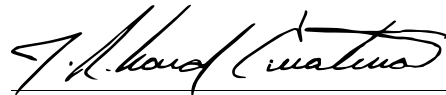
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Attorneys for Defendants

12 PURSUANT TO STIPULATION, IT IS SO ORDERED

13 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
14 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
15 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
16 documents, including the attorney-client privilege, attorney work-product protection, or any other  
17 privilege or protection recognized by law.

18 Dated this 5th day of November, 2020.

19 

20 J. Richard Creatura  
21 United States Magistrate Judge  
22  
23  
24

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of  
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
 issued by the United States District Court for the Western District of Washington on  
 \_\_\_\_\_ in the case of *Flooring Associates Inc v. Design Manufacturing International LLC*  
*et al.*, 2:20-cv-00057-JCC-JRC. I agree to comply with and to be bound by all the terms of this  
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
 not disclose in any manner any information or item that is subject to this Stipulated Protective  
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_